

*Sick Puppy Outweighs the Law*

## Pet Restriction Upheld

BY LAURI CROCE, ESQ.



San Vincente Villas homeowner, Marci Cohen, took a sickly puppy into her home and nursed it back to health. The dog quickly grew to 50 lbs. The San Vincente Villas Homeowners Association's CC&Rs provided that dogs, cats and other household animals weighing more than 15 pounds were not allowed without the written consent of the Board. In a situation evoking sympathy for all parties concerned – the dog, Ms. Cohen and the Board and other members of the community – the Association was successful in enforcing the pet weight restriction and compelling Ms. Cohen to remove her dog.

The decision, *San Vincente Villas Homeowners Association, Inc. v. Marci Cohen*, is an unpublished one rendered by the appellate court in Los Angeles. The written opinion contains a usefully concise presentation of the “reasonable conduct” standard applied to boards of directors pursuant to the now familiar *Nahrstedt* and *Lamden* cases. The decision also addresses, albeit indirectly, an issue facing many associations: in light of Civil Code Section 1360.5 (requiring associations to allow at least one pet under certain circumstances), may an association nevertheless put restrictions on the one allowed pet, such as height, weight, or other size restrictions?

Citing primarily to the California Supreme Court's decisions in *Nahrstedt v. Lakeside Village Condominium Association* (1994) 8 Cal.4th 361, and *Lamden v. La Jolla Shores Clubdominium Homeowners Association* (1999) 21 Cal.4th 249, the court spelled out the basic rule of judicial review of CC&R enforcement: a restriction will be upheld so long as it is reasonable and not arbitrary, not a violation of public policy, the burdens of the restriction do not outweigh the benefits, and the procedures for enforcement were carried out in good faith, fairly and uniformly. It then analyzed the

San Vincente Villas Homeowners Association's actions under each of the four prongs of the test. They are:

### 1. The restriction was not arbitrary.

The Association presented good reasons for the 15-pound weight limit. The reasons included that the condominiums were located in a “hotel-style” building, with narrow hallways, a single elevator, and a narrow back stairway; that there were safety concerns expressed by other homeowners; and that the residents shared close living conditions making the distinction between large and small dogs reasonable. The court also agreed with the Association's assertion that it should not have to make a determination as to which large dog was safe and which was not.

### 2. The restriction did not violate public policy.

Ms. Cohen argued that Civil Code Section 1360.5 expresses a public policy to allow any single pet into a common interest development. The court noted, however, that Section 1360.5 states that allowing one pet remains “subject to reasonable rules and regulations.” Hence, the restriction on size appeared to be reasonable, for the reasons discussed above, for this community.

### 3. The burden of the restriction did not outweigh its benefits.

The court took into account the convenience, safety, and certainty benefits, balancing them against Marci Cohen's devotion to her pet. Noting that Ms. Cohen bought her condominium with full knowledge of the restriction and had been given ample opportunity to find a new home for the pet, the court balanced the equities in favor of the Association.

### 4. The Board's procedures were carried out in good faith, fairly and uniformly.

It is particularly worth noting the impact on the court made by this Board acting “above and beyond” toward Marci Cohen and her pet

before pursuing litigation. Ms. Cohen took in the dog in November 1999. In March 2000 the Board sent its first notice that the dog had grown to exceed the permissible weight. The Board then gave Ms. Cohen 45 days to find a new home for the dog. When she did not remove the dog, the Board conducted two hearings after receiving complaints from other homeowners about the oversized dog.

The Association eventually filed suit in May 2001. Ms. Cohen was not able, credibly, to challenge the fairness or good faith of the Board under these conditions, so she raised the issue of selective enforcement. The court was persuaded that the Association's evidence of two prior instances of oversized pets followed by a notice in 1998 to all homeowners that it would no longer tolerate violations of the rule was sufficient to overcome Ms. Cohen's allegations.

In closing, the court made a series of statements that cannot be put into better words:

“One cannot help being sympathetic to Cohen. Her act of taking in a sick puppy was noble and her attachment to the dog understandable. We are aware of the value of a pet to the health and welfare of its master... Some might wish Cohen would have had a sympathetic response for the Board had she made a timely request [for permission to keep the dog], but under the circumstances, the Board had the right to act as it did. Other owners rely on the CC&Rs when they choose to live on the premises. Indeed, they might have a claim if the restrictions had not been enforced... There are justifiable reasons for the restriction. Cohen was at all times aware of the restriction and chose to ignore it.”

Chose, indeed, to ignore the restriction at her peril. Marci Cohen not only lost the case, but she had to pay the Association's attorneys' fees and costs of litigation through appeal, in addition to her own. ■